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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,825	06/28/2001	Sorin Faibish	10830.0080.NPUS00	5261

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EXAMINER

PARRY, CHRISTOPHER L

ART UNIT

PAPER NUMBER

2623

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/893,825

Applicant(s)

FAIBISH ET AL.

Examiner

Chris Parry

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.


Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's argument (Page 21, 1st paragraph, lines 1-4), stating Armstrong does not disclose wherein the movies are ranked with respect to popularity..., the examiner respectfully disagrees. Armstrong discloses primary storage partition 218 on the primary storage device 216 at each head-end 210 is used to store frequently requested video assets or "movies" (Page 10, lines 1-2). Further, secondary storage partition is used to store portions of infrequently requested video assets or "movies" (Page 10, lines 6-7). Armstrong discloses frequently requested or "popular" movies take precedence over less requested or "unpopular" movies by storing the frequently requested movies in full on primary storage partition 218 and infrequently requested movies are divided amongst the plurality of head-ends 210 (Page 10, lines 1-16). Further, Armstrong discloses only a vast number of available video titles may be considered "popular" by the subscriber at any one time (Page 3, lines 23-25). Armstrong further teaches, if a movie is shown to be in popular demand by the consumer, such as by surpassing a threshold request rate, the movie is stored across all the headends while the remaining "unpopular" movies are stored in secondary storage. So therefore, Armstrong discloses ranking movies by teaching a movie may become more popular by surpassing a request rate and therefore may out rank a movie that is less popular that fails to surpass the aforementioned request rate.

In response to applicant's argument (Page 22, 2nd paragraph, lines 1-6), stating Armstrong fails to disclose wherein the data movers in the respective sets of data movers are configured differently..., the examiner respectfully disagrees. Armstrong discloses wherein the data movers (2102-210n - figure 2) in the respective sets of data movers are configured differently for providing more network interface resources (218 - figure 2) for very popular movies and for providing more local cache memory (219 - figure 2) for less popular movies (Page 10, lines 1-17). Further, the term "network interface resource" may be interpreted very broadly and may read on a memory device as every memory is a network resource. Also, each network interface card or network interface resource must comprise memory in order to temporarily store or buffer video data before transmitting the video data to requesting clients.

In response to applicant's argument (Page 26, 2nd paragraph, lines 4-6), stating Mizutani does not disclose data movers are pre-assigned for servicing video streams for each movie ranking, the examiner respectfully disagrees. Mizutani teaches movies that are predicted to be highly requested or "popular" are assigned to more video servers whereas movies that are predicted to be less requested or "less popular" are combined with other less popular movies in a video server. Mizutani teaches pre-assigning video streams to video server based on video ranking by disclosing movies that are to be accessed many times over a movie that may not be accessed as much are provided on more video servers (figures 7, 11, and 16; Col. 10, line 54 - Col. 11, line 40). So therefore, movies that are anticipated to be accessed more must be ranked higher than movies that are not anticipated to be accessed that often, therefore facilitating video servers are pre-assigned video streams for each movie ranking.

In response to applicant's argument (Page 27, 1st paragraph, lines 3-4), stating there is no suggestion to combine Armstrong and Mizutani, the examiner previously addressed this issue in the last action and therefore will not address the issue again.

In response to applicant's argument (Page 28, 3rd paragraph, lines 1-8), the examiner previously addressed this issue in the last action and therefore will not address the issue again.

  
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